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Message Text

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PAGE 01 BRUSSE 07923 131421Z
ACTION IO-14

INFO OCT-01 EUR-12 ISO-00 AGRE-00 SP-02 USIA-15 AID-05
EB-07 NSC-05 EPG-02 TRSE-00 SS-15 STR-04 OMB-01
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FM AMEMBASSY BRUSSELS
TO SECSTATE WASHDC 0817
INFO ALL EC CAPITALS
AMEMBASSY PARIS
USMISSION GENEVA

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USEEC

PASS AGRICULTURE ELECTRONICALLY
GENEVA ALSO FOR USMTN
PARIS ALSO FOR USOECD

E.O. 11652: N/A
TAGS: EAGR, EEC
SUBJ: EUROPEAN COURT OF JUSTICE (ECJ) RULES NFDM
COMPULSORY PURCHASE SCHEME ILLEGAL

REF: EC BRUSSELS 5823

1. ON JULY 5, THE ECJ RULED THAT THE NFDM COMPULSORY PURCHASE SCHEME, PUT INTO EFFECT BY THE COMMUNITY IN THE PERIOD MARCH - OCTOBER 1976, WAS ILLEGAL. THUS, THE ECJ FOLLOWED THE RECOMMENDATION OF THE ADVOCATE GENERAL (REFTEL). ESSENTIALLY THE COURT FOUND THE SCHEME TO BE IN VIOLATION OF ARTICLE 40 (3) OF THE TREATY OF ROME, WHICH STATES THAT EC COUNCIL REGULATIONS "SHALL BE LIMITED TO PURSUIT OF THE OBJECTIVES SET OUT IN ARTICLE 39 AND
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PAGE 02 BRUSSE 07923 131421Z

SHALL EXCLUDE ANY DISCRIMINATION BETWEEN PRODUCERS OR CONSUMERS WITHIN THE COMMUNITY". THE COURT STATED THAT A PURCHASE OBLIGATION AT SUCH A DISPROPORTIONATELY HIGH PRICE (3 TIMES ITS FEED VALUE) CONSTITUTED A DISCRIMINATORY DIVISION OF BURDENS BETWEEN VARIOUS AGRICULTURAL SECTORS. MOREOVER, THE PURCHASE OBLIGATION WAS NOT NECESSARY TO ACHIEVE THE ENVISAGED GOAL OF DISPOSAL OF NFDM

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009

STOCKS. CONSEQUENTLY, THE SCHEME COULD NOT BE JUSTIFIED WITHIN THE FRAMEWORK OF THE REALIZATION OF THE GOALS OF THE COMMON AGRICULTURAL POLICY.

2. IN ITS SUPPORTING ARGUMENT, THE COURT MADE A NUMBER OF INTERESTING POINTS. THE FEED VALUE OF NFDM WAS SAID TO BE COMPARABLE TO THAT OF SOYA - THE PRICE OF WHICH RANGED FROM 13.30 TO 20.40 U.A./100 . AND AVERAGED 18 U.A./100 KG DURING THE PERIOD OF OPERATION OF THE COMPULSORY PURCHASE SCHEME. THIS PRICE WAS COMPARED WITH THE OBLIGATORY PURCHASE PRICE OF 52.16 U.A./100 KG PLUS DENATURING COSTS OF 3 U.A./100 KG, LEADING THE COURT TO CONCLUDE THAT THE PRICE CHARGED FOR NFDM WAS APPROXIMATELY TRIPLE ITS FEED VALUE. THE COURT ALSO NOTED THAT THE SCHEME MADE NO PROVISION FOR THE RECUPERATION OF THE HIGHER FEED COSTS TO LIVESTOCK PRODUCERS, IN PARTICULAR PIG AND POULTRY PRODUCERS, ENGENDERED BY THE SCHEME.

3. THE ECJ HAS UNDER CONSIDERATION SOME EIGHT SEPARATE COURT CASES INVOLVING THE COMPULSORY PURCHASE SCHEME. FOUR OF THESE INVOLVED REQUESTS FOR INTERPRETATIONS OF COMMUNITY LAW BY DUTCH AND GERMAN NATIONAL COURTS UNDER THE PROVISIONS OF ARTICLE 177 OF THE TREATY OF ROME. THE OTHER FOUR CASES WERE BROUGHT DIRECTLY TO THE ECJ BY GERMAN FIRMS SEEKING DAMAGES UNDER THE PROVISIONS OF ARTICLE 215 OF THE ROME TREATY. THE COURT'S DECISION CONCERNS ONLY THE FOUR UNCLASSIFIED

REQUESTS FOR THE INTERPRATION OF COMMUNITY LAW. THESE CASES (AND ANY SUBSEQUENT DAMAGE SUITS) WILL NOW BE OFFICIALLY SETTLED IN THE NATIONAL COURTS. DECISION ON THE DAMAGE CASES UNDER ARTICLE 215 HAS BEEN DEFERRED UNTIL LATE SEPTEMBER . NONETHELESS, SINCE THE COURT HAS DETERMINED THE COMPULSORY PURCHASE SCHEME TO BE ILLEGAL IT WOULD APPEAR THAT THE FIRMS IN QUESTION WOULD BE ELIGIBLE FOR THE AWARD OF DAMAGES CAUSED BY THE REGULATION. -- PARTICULARLY IN VIEW OF THE ECJ'S EMPHASIS ON THE DISPROPORTIONATELY HIGH COST OF NFDM. THE COURT'S DECISION IS EXPECTED TO OPEN THE GATE TO A WAVE OF DAMAGE SUITS. THESE SUITS MAY PURSUED IN THE NATIONAL COURTS OR DIRECTLY WITH THE ECJ UNDER THE PROVISIONS OF ARTICLE 215.

4. AS THE COMPULSORY PURCHASE SCHEME HAS ALREADY BEEN TERMINATED, THE ECJ FINDING OF ILLEGALITY WILL HAVE NO DIRECT POLICY IMPLICATIONS. HOWEVER, AS NOTED IN THE REFTEL, THIS DECISION SHOULD MAKE THE COMMISSION AND THE COUNCIL CONSIDERABLY MORE CAUTIOUS IN THE FUTURE DEVELOPMENT OF AGRICULTURAL POLICY.

5. COPIES OF THE ECJ DECISION, WHICH AS YET IS AVAILA-

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BLE ONLY IN FRENCH, HAVE BEEN SENT TO ERNEST KOENIG, US
MISSION GENEVA, AND RICHARD SCHROETER, FAS, WASHINGTON.
THE ENGLISH VERSION WILL BE TRANSMITTED BY AIRGRAM AS
SOON AS IT IS PUBLISHED. HINTON

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